IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1969 of 1982

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAMIYATRAM ACHARATLAL BHATT DECD BY HIS HEIRS

Versus

TRAMBAKLAL BHAVANISHANKER DAVE

Appearance:

1. First Appeal No. 1969 of 1982

MS. TRUSHA PATEL FOR MR AJ PATEL for Appellant No. 1-1/B

..... for Appellant No. 1/C-6

MR DF AMIN for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

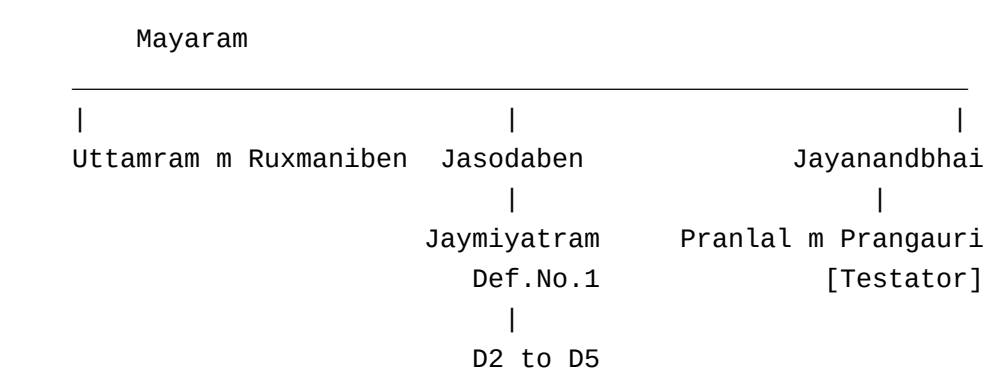
Date of decision: 29/04/2004

ORAL JUDGEMENT

1. The appellants are the original defendants and

the respondents are the original plaintiffs in Special Civil Suit No. 189 of 1974 which was decreed in favour of the respondents by the learned Civil Judge (S.D.) Nadiad by his judgment & order dated 21-4-1982.

2. The respondents are the executors and trustees of the Will of one Prangauri who died on 11-9-1974. The dispute in the present litigation is about the execution and validity of the Will dated 30-5-1973 executed by Prangauri and the ownership and possession of the suit house. The appellants are related to said Prangauri as shown in the table below.



3. It will be seen that the defendant No.1 was the son and defendant No.2 to 5 were the grand children of Jasodaben who was the sister of Jayanandbhai, the father in-law of Prangauri. According to the defendants, Uttamram in his Will had referred to the suit house as a joint property of Pranlal and himself and subsequently there had never been any division between Uttamram and Pranlal, and hence, they were entitled to 1/2 share in the house. The plaintiffs' case was that the suit house was of the absolute ownership of Prangauri and she was entitled to dispose of the same by her Will. Under the Will the suit house was directed to be sold and the proceeds were to be donated to the General Hospital, Umreth for endowing a bed in the maternity ward for giving free treatment to women of her caste.

4. Respondents alleged that after the death of Prangauri the appellants had published a notice on 1-12-1974 in respect of the suit property and started quarrelling with the respondents. The respondents had to lodged a complaint with the police. However, the appellants No. 4 to 6 illegally trespassed in the house on 16-12-1974. The respondents, therefore, filed the suit for declaration that the suit property belonged to

deceased Prangauri Pranlal and for recovering possession of the suit house which had been illegally occupied by the appellants. They also claimed Rs.75-00 per month as damages.

5. The defendants in their written statement contended that the suit property was in their possession according to the Will of Uttamram. They denied that they had trespassed in the property. They pleaded that they were in possession of the property as the legal owner and that the possession of the suit property was common right from the life time of Pranlal and Prangauri. They contended that Prangauri had not executed the Will in a sound and disposing state of mind.

6. The following issues were framed by the learned trial Judge:

1. Whether the plaintiff proves that the suit property as described in plaint para 1 and 2 belonged to the deceased Pranguari Pranlal Thaker as an owner ?

2. Whether the plaintiff proves that deceased Prangauri Pranlal Thakkar executed the Will dated 30-5-1973 in her sound and disposing state of mind ?

3. Whether the plaintiffs prove that they are appointed as trustees and executors under the suit will and that after the demise of Prangauri they took over the possession of the property of the deceased including the suit property and are in actual possession of the same ?

4. Whether the pltffs prove that the defts have illegally trespassed and wrongfully took possession of property described in para 2 of the plaint ?

5. Whether this Court has no jurisdiction to hear and try this suit ?

6. Whether the suit is properly valued for Court fees? If not what should be the proper Court fees?

7. Whether the plaintiffs are entitled to the declaration and injunction as prayed for ?

8. Whether pltffs are entitled to recover the

possession of suit ground floor-Delha as described in plaint para-2 from the defts ?

9. Whether the pltffs are entitled to get Rs.75/- per month as damages from the defts for their illegal and wrongful occupation of suit property described in para 2 of the plaint ?

After recording the evidence, oral and documentary, adduced by the parties and considering the submissions and arguments made on behalf of the parties, the learned trial Judge answered the Issues No. 1 to 9 in favour of the plaintiffs. He, therefore, decreed the suit as prayed for.

7. The appellants have therefore filed this First Appeal under section 96 of the Civil Procedure Code challenging the said judgment and decree.

8. It appears that at the time of admission the appellants had moved a civil application for stay of the decree for possession, but the same was rejected. The respondents have recovered possession of the suit property in execution of the decree.

9. The Will executed by Prangauri was registered under the provisions of the Registration Act and its formal execution is not now under challenge. However, the defendants contended that Prangauri was 73 years old at the time of execution and she was not in a sound and disposing state of mind to understand what she was doing. Reliance is placed on the letter exhibit-183 written by Pranlal to his nephew in which he said that his wife had heart trouble and was a diabetic and she was suffering from mental depression. The learned trial Judge has considered the evidence on this aspect in detail and recorded the finding that no suspicious circumstance can be attributed to the Will. Merely because the deceased was suffering from mental depression it cannot be inferred that she did not have the mental capacity to make the Will. Having gone through the evidence and the discussions in the judgment on this issue, I see no reason to disagree with the conclusion reached by the learned Judge on the validity of the Will executed by Prangauri.

10. The next important question is whether the suit property belonged to deceased Prangauri or whether the suit property was in the possession of the defendants according to the Will of Uttamram.

11. It appears that the Will of Uttamram was produced in a civil suit filed in 1950 by Pranlal against one Vasudev Shelat, the brother of Uttamram's widow Ruxmaniben, and the appeal arising from the said proceedings was pending in the Supreme Court when the present suit was filed. The defendants produced a copy of the Will but it was not exhibited. However, the learned advocate for the appellants contended that in the judgment of the High Court in Letters Patent Appeal (exhibit-253) there is a reference to admission by Pranlal that Uttamram had executed the said Will and that he was a witness to the said Will. According to the appellants three houses were referred to in the said Will as of the joint ownership of Uttamram and Pranlal. However the plaintiffs have led voluminous evidence to show that subsequently one house was mutated in the name of the present appellants, the second house was dedicated by deceased Pranlal to a library which was inaugurated by Hon'ble Mr. Justice Shah of Bombay High Court (as he then was) and the third house was mutated in the name of Pranlal. Documentary evidence show that taxes were also paid by Pranlal. The defendant no. 5 Rajendrakumar Jamiatram admitted in cross examination that according to his knowledge the suit house had stood in the name of Pranlal in the City Survey record and the Municipal record for 30 years. He also admitted that the suit house was mutated in the name of Pranlal as the owner. Moreover the plaintiffs also produced a copy of the plaint in a civil suit filed by defendant No.1 against the brother of Ruxmaniben in 1948 (exhibit-179) in which he had stated that it had been agreed between him and Pranlal that the house bearing survey No. 5312 will go to his share and the other two houses bearing revenue survey No. 5305 and 5331 were to go to the share of Pranlal. It was also stated that Pranlal had handed over possession of the house bearing survey No. 5312 to him and it was mutated in his name in the City Survey record and Municipal record. He also stated that other two houses bearing survey No. 5305 and 5331 were to be mutated in the name of Pranlal. As stated earlier the documentary evidence shows that subsequently the said two houses were mutated in the name of Pranlal and the house bearing Survey No. 5305 was dedicated to a library in the life time of Pranlal and it is admitted by defendant no.5 that the suit house bearing survey No. 5331 had stood in the name of Pranlal as owner for atleast 30 years. After the death of Pranlal on 10-1-1973 it was mutated in the name of Prangauri as absolute owner. In view of this evidence the learned trial Judge has rightly come to the conclusion that the house in question belonged to Prangauri and the defendants had no interest

in the same.

12. The learned advocate for the appellants has however contended that the plaintiffs had not made any reference to any such partition in the reply to the public notice given by the defendants or in the plaint and there was no issue as to partition in the absence of any plea in the plaint or any specific issue no evidence could have been admitted. Reliance is placed on the decision of this Court in VASUDEV DHANJI VARU Vs. BHOGILAL MANOHARDAS VAISHNAV, 1998 (1) G.L.H. 728 and on the decision of the Supreme Court in PRATAPRAI N. KOTHARI Vs. JOHN BRAGANZA, (1999) 4 SCC, 403. These decisions have no application to the facts of the present case. In order to prove that the suit house belonged to Prangauri, the plaintiffs were entitled to lead evidence of the antecedent facts showing how Pranlal had derived the title. The defendants had full opportunity to rebut the evidence led by the plaintiffs and they did make an attempt, but they have not succeeded. No prejudice has been caused to the defendants. As stated earlier, the conclusion of the learned Judge that the suit belonged to Prangauri and she was competent to dispose of the same by Will is fully justified by the evidence on record. The learned Judge therefore rightly decreed the suit in favour of the respondents. There is no substance in the appeal and the same is dismissed. No order as to costs.

Dt: 29-4-2004 (M.C. Patel, J)

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